



**Desk study on
financial regulation drivers
for
current restrictions of civil society
in Uganda**

May 2017

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1. EXECUTIVE SUMMARY

This briefing paper looks at the Uganda's anti-money-laundering and countering the financing of terrorism laws and regulations, mostly through its adherence to the Financial Action Task Force (FATF) regime, which is outlined in some detail. It also delineates the country's existing laws and regulations in the field. Together, the paper aims to arrive at a picture of the existing regulatory and institutional environment impacting the operational space of civil society in Uganda. It then points to the windows of opportunity now available to nonprofit organisations, as part of the FATF extended evaluation process, to engage in the process in order to raise awareness on the adverse impact of some of the legislation which is, in turn, severely impinging on the effective functioning of many civil society organisations.

2. INTRODUCTION

2.1 The Financial Action Task Force: Who?

[The Financial Action Task Force](#) (FATF) is the international standard setter mandated with countering money laundering and the financing of terrorism. Initially set up in the 1990s to tackle money laundering and the misuse of financial institutions resulting from the drugs trade, the FATF's mandate was enlarged post 9/11 to include the fight against terrorist financing.

The FATF is not a treaty organisation, but comprises 37 [members](#) (including two regional organisations: the Gulf Cooperation Council and the European Commission). Apart from the more than 20 multilateral bodies which have observer status, including development institutions, financial intelligence units and law enforcement, there are 9 associate members, tasked with enforcing the FATF's mandate on a regional basis. Uganda falls under [ESAAMLG](#) – the Eastern and Southern Africa Anti-Money Laundering Group, based in Dar es Salaam, Tanzania.

2.2 The Financial Action Task Force: What?

Both a policy-making and an enforcement body, the FATF has set out [40 Recommendations](#) – considered globally as the international standards on combating money laundering and the financing of terrorism and proliferation. It [sees its task](#) as being not only that of standard-setting and promoting ‘effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing’, etc., but also that of generating ‘the necessary political will to bring about national legislative and regulatory reforms in these areas’.

2.3 The Financial Action Task Force: How?

The FATF implements its 40 Recommendations through a [process of mutual country evaluations](#) it carries out on an ongoing basis. These country evaluations are peer reviews – meaning members from different countries, usually part of the region, assess a third country. The mutual evaluation report resulting from this evaluation analyses the robustness of a country’s system when it comes to countering money laundering and the financing of terrorism. The onus is entirely on the country being evaluated to demonstrate that it has a financial system that is adequately resistant to criminal abuse.

There are two components to the mutual evaluation process – one, a focus on technical compliance, so whether the assessed country has the laws and regulations in place to tackle money laundering and terrorism financing – and two, and lately more so now, a greater focus on effectiveness, so a demonstration that the measures taken by the assessed country are, indeed, working, are fit-for-purpose, and are delivering the right results. Effectiveness is context-specific, and so depends on the money laundering and terrorism financing risks the assessed country is facing. The measures that the country puts in place thus need to be proportional to the risks faced.

3. UGANDA’S MUTUAL EVALUATION

3.1 Process

Uganda was assessed against the 40 FATF Recommendation during an onsite visit that took place between the 15 and 26 of June, 2015 (the [Mutual Evaluation Report](#) was adopted by the FATF in April 2016). For an overview of the Mutual Evaluation Process, see the FATF’s visualisation of the process in Figure 1 below.

The Mutual Evaluation Process

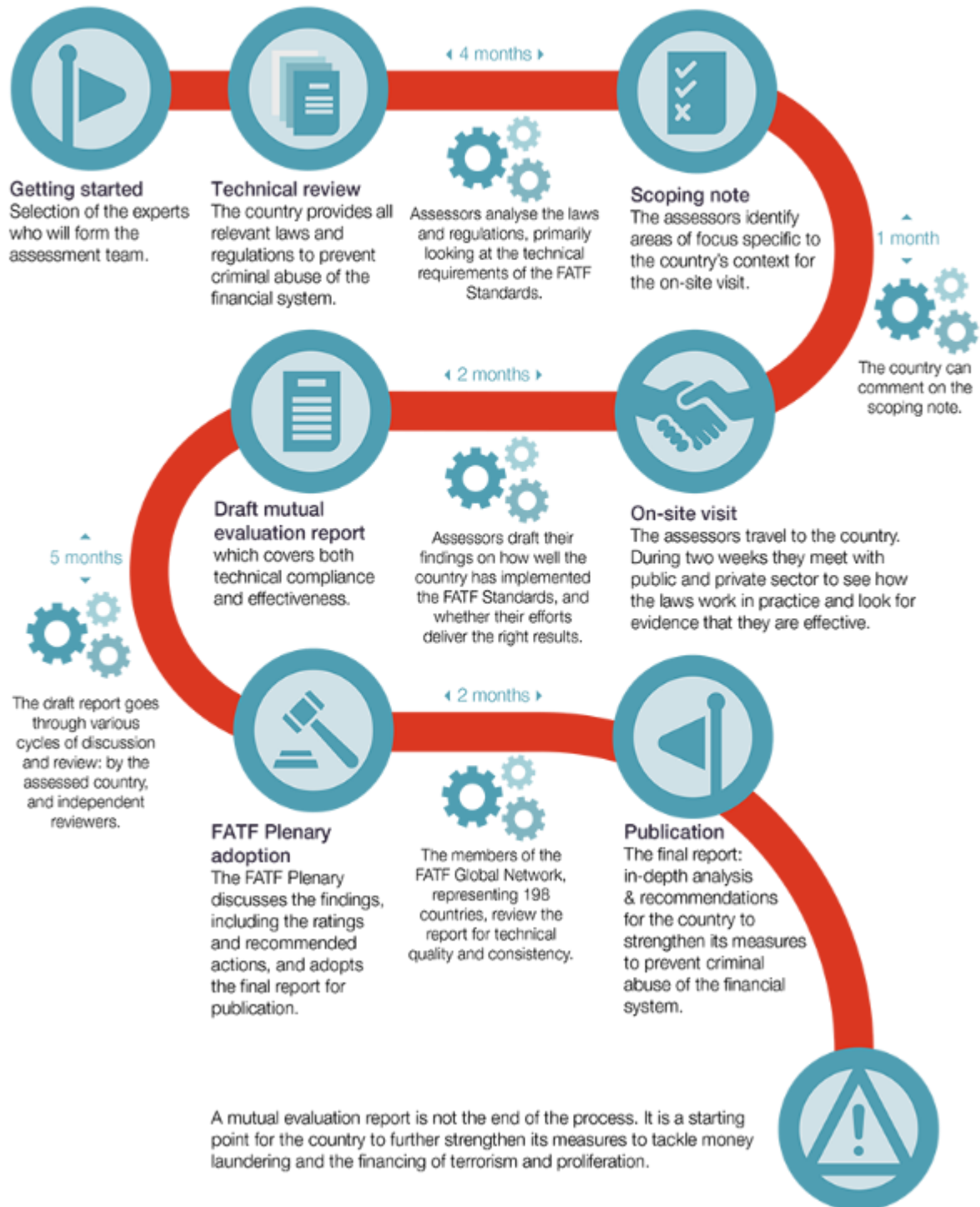


Figure 1 ©FATF ([http://www.fatf-gafi.org/publications/mutualevaluations/more/more-about-mutual-evaluations.html?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/mutualevaluations/more/more-about-mutual-evaluations.html?hf=10&b=0&s=desc(fatf_releasedate)))

3.2 Result

On **technical compliance**, the country was rated '**non-compliant**' on 21 of the 40 Recommendations, including all the ones on Terrorist Financing and the Financing of Proliferation (of weapons of mass destruction: the FATF was mandated to look into this in 2008 as a new and emerging threat): namely Recommendations 5, 6, 7, 8. Of particular relevance for the audience of this document is the last one – Recommendation 8, on nonprofits. It was also judged to be non-compliant on applying a risk-based approach (Recommendation 1), on record-keeping (Recommendation 11) and on the reporting of suspicious transactions (Recommendation 20). On some other core Recommendations such as on money laundering offences (Recommendation 3) and customer due diligence (Recommendation 10), the country was rated as being **partially compliant**.

On the **effectiveness component** of the evaluation, i.e., on whether the country has an effective system to combat money laundering and terrorism financing, Uganda was rated '**low**' against **all** the 11 objectives (Immediate Outcomes) used to measure this. Given the numerous deficiencies highlighted, it was recommended that Uganda carry out a national risk assessment or, 'where possible', sectoral money laundering /terrorism financing risk assessments in order to develop a risk-based action plan in line with the risks identified. (No particular sectors were singled out in the FATF Report.) This would form part of the FATF's follow-up or enhanced evaluation process.

4. NONPROFITS AND FATF

4.1 Recommendation 8

[Recommendation 8](#) (p.13) of the FATF's 40 Recommendations is on nonprofit organisations (NPOs). It states that:

Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse, including:

(a) by terrorist organisations posing as legitimate entities;

(b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and

(c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

Recommendation 8 and its Interpretative Note require countries to review:

- the activities, size and other relevant features of their NPO sector, and
- the adequacy of applicable laws and regulations.

Recommendation 8 and its Interpretive Note also require countries to:

- apply a risk-based, focused and proportionate approach to the NPO sector, and not disrupt legitimate charitable activity
- reach out to NPOs in a sustained manner
- effectively gather information and identify the subset of NPOs which falls under the FATF definition
- undertake investigations where abuse is suspected, and co-ordinate internationally.

The above, however, is the revised Recommendation 8, adopted by the FATF in June 2016, and the result of years of nonprofit advocacy. The earlier iteration of Recommendation 8 (and the version used during the Ugandan mutual evaluation process) characterised nonprofits as ‘particularly vulnerable’ to terrorism financing abuse. The Recommendation endorsed a broad-brush approach, with little or no evidence backing its assertions. [The Global NPO Coalition on FATF](#) campaigned long and hard to revise the Recommendation, combatting the beliefs underpinning it with much circumstantial evidence and with proof of the impact of such a position on the legitimate work of the vast universe of NPOs. The advocacy has borne fruit, with the new revised Recommendation and the emphasis by the FATF on the need for a risk-based, targeted and proportionate approach (see Figure 2).

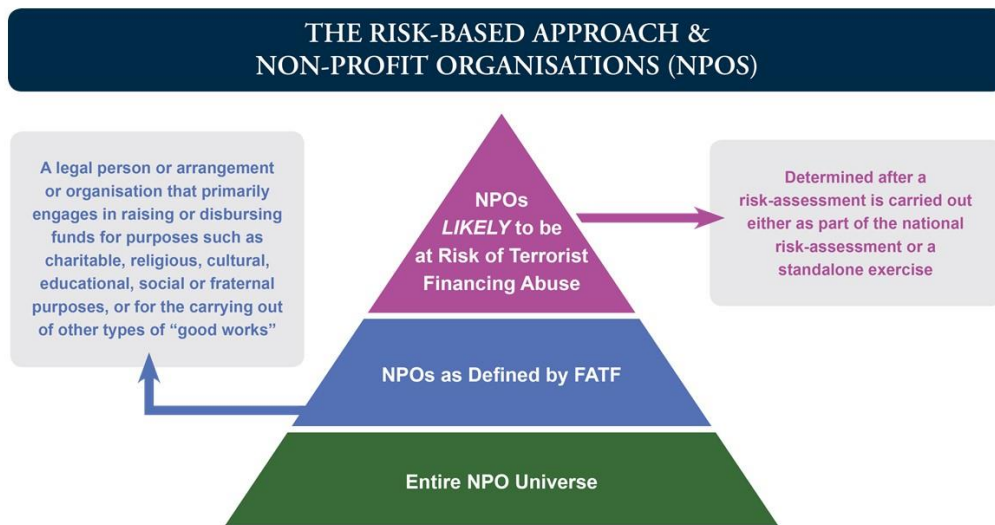


Figure 2: ©NPO Platform on FATF

Additionally, given the effectiveness component of the evaluation, the FATF MER should, in theory, point out any unnecessary overregulation of the sector – and in the event of such cases, give the country a non-compliant rating for that Recommendation. However, this could potentially be a grey area. The rationale behind (over)regulating the NPO sector is often presented by governments as being related to ‘national security’ concerns. This goes beyond the FATF’s remit of looking at overregulation that is evidence- and fiscal-based, and is an arena underpinned by political logic that the FATF would be loath to enter into.

As mentioned earlier, Uganda was judged to be non-compliant with Recommendation 8 during the 2015 Mutual Evaluation process – meaning that the country was found to have inadequate laws and regulations when it came to nonprofits, making the sector vulnerable to terrorism financing abuse.

To further understand this, we need to examine the following in the context of Uganda:

1. The existing counter-terrorism and anti-money-laundering legislation (the latter in view of Recommendations 24 and 25 relating to beneficial ownership, with countries required to take measures to prevent the misuse of legal arrangements for ML/TF. Also, to determine whether there is any intersection between criminal and terrorist activity)
2. The legislation as it relates to NPOs

3. The prevailing climate for NPOs
4. Specific NPO rules and regulations
5. NPO self-regulation measures
6. Risk assessment

5. EXISTING IN-COUNTRY LEGISLATION RELEVANT TO FATF MUTUAL EVALUATION

5.1 The Anti-Money Laundering Act (2013)

[The Anti-Money Laundering Act](#) (AMLA) of 2013 was considered by the FATF to be fairly comprehensive, covering 'all but one' of the possible money laundering offences mentioned in the FATF glossary.

An Act to provide for the prohibition and prevention of money laundering, the establishment of a Financial Intelligence Authority and a Financial Intelligence Authority Board in order to combat money laundering activities; to impose certain duties on institutions and other persons, businesses and professions who might be used for money laundering purposes; to make orders in relation to proceeds of crime and properties of offenders; to provide for international cooperation in investigations, prosecution and other legal processes of prohibiting and preventing money laundering; to designate money laundering as an extraditable offence; and to provide for other related matters.

(The Anti-Money Laundering Act, 2013)

However, given that Uganda had not carried out a national risk assessment, it was judged to have a low understanding of the money laundering risks it was facing. Additionally, the FATF noted that not enough cases of money laundering, in their opinion, had been investigated by the Ugandan law enforcement agencies, thus equating effectiveness with the prosecution of cases. Such a measure of effectiveness is, of course, worrying and could lead to a slippery slope encouraging the over-zealous pursuit and spurious prosecution of anti-money-laundering cases.

5.2 Anti-Terrorism Act (2002)

On terrorism, Uganda passed the [Anti-Terrorism Act of 2002](#) immediately after 9/11, seeking to define terrorism and including a section on the financing of terrorism.

An Act to suppress acts of terrorism, to provide for the punishment of persons who plan, instigate, support, finance or execute acts of terrorism; to prescribe terrorist organisations and to provide for the punishment of persons who are members of, or who profess in public to be members of, or who convene or attend meetings of, or who support or finance or facilitate the activities of terrorist organisations; to provide for investigation of acts of terrorism and obtaining information in respect of such acts including the authorising of the interception of the correspondence of and the surveillance of persons suspected to be planning or to be involved in acts of terrorism; and to provide for other connected matters.

(The Anti-Terrorism Act, 2002)

*Interestingly, NPOs were **not** mentioned in either The Anti-Terrorism Act of 2002 or The Anti-Money Laundering Act of 2013.*

The FATF, as mentioned earlier, found Uganda non-compliant with its terrorism financing Recommendations. It stated that given the risks the country faces from groups operating out of the country, such as the Lord's Resistance Army (LRA), as well as from groups based across the border in Somalia such as Al-Shabaab, its laws and measures were inadequate. The Mutual Evaluation Report recommended the introduction of:

... a much more efficient system to manage and regulate the NPO sector, including strengthening the legal framework, adequately resourcing the NGO Board and AML/CFT awareness in the sector. (p. 13)

6. NPOS IN UGANDA: CLIMATE, LAWS

Civil Society Organisations (CSOs) have a long history in Uganda – from colonial times, through a somewhat rocky period for them after independence and under the leadership of, first, Idi Amin and then Milton Obote, through to the Museveni era since 1986. While CSOs are seen to play an important role in

service delivery for poverty alleviation and other development programmes, their role in the advocacy and policy arena is not as straightforward. And even though fundamental freedoms such as engaging in peaceful activities aimed at influencing government policy are enshrined in the Ugandan Constitution (1995), and Uganda is a signatory of the Universal Declaration of Human Rights (UDHR, 1948) in which freedom of association is similarly enshrined, as well as numerous other conventions such as the International Covenant on Civil and Political Rights (ICCPR, 1996) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), the prevailing landscape in which civil society operates in Uganda is far from ideal.

So while there are a number of NGOs fighting for issues such as electoral reform, the protection of human/civic rights and good governance, the operational space for civil society is narrowing in Uganda, as it is in many parts of the world. Some of the recent legislation that has had a direct impact on civic space is as follows:

The Public Order Management Act (POMA), 2013 grants the police powers to prohibit public meetings and to decide on suitable venues for holding public meetings. The International Center for Not-For-Profit Law (ICNL) [has found](#) that: ‘Since the enactment of the Act, there has been a disproportionate targeting of meetings organized by opposition members and/or civil society representatives.’

The Anti-Pornography Act (APA), 2014, in telling women how (not) to dress has been [seen as an attack on women’s personal autonomy and expression](#), and therefore against national and international human rights standards.

The Anti-Homosexuality Act, which was signed into law by the President in February 2014, criminalises same-sex relations, outlaws the promotion of homosexuality (therefore including NPOs that advocate for LGBTI rights) and obliges Ugandans to denounce gay people to the authorities in the country. The Constitutional Court of Uganda, however, ruled the Act invalid on procedural grounds (lack of quorum in house when bill passed) in August 2014. Another bill, The Prohibition of Promotion of Unnatural Sexual Practices Bill, was introduced in October 2014 – very similar to the Anti-Homosexuality Act. However, this has not been passed yet due to enormous pressure, both from domestic LGBTI groups and from Western governments.

The Non-Governmental Organisations (NGO) Act was passed in 2016. It aims:

... to provide a conducive and an enabling environment for the Non-Governmental Organisations sector; to strengthen and promote the capacity of Non-Governmental Organisations and their mutual partnership with Government; to make provision for the corporate status of the National Bureau for Non-Governmental Organisations and provide for its capacity to register, regulate, coordinate and monitor Non-Governmental Organisations activities; to provide for the board of directors; to provide for the establishment of branch offices of the Bureau, District Non-Governmental Organisations Monitoring Committees, Subcounty Non-Governmental Organisations Monitoring Committees, to make provision for special obligations of Non-Governmental Organisations and to provide for other related matters.

([Non-Governmental Organisations Act](#), 2016, p. 4)

The National Bureau for NGOs is given broad powers, including the refusal to register an NGO and the power to revoke an NGO's permit, apart from a say in how/where the organisation may carry out its activities, and how it should be staffed. Freedom of association and expression is also sought to be curtailed with a system of permissions from monitoring bodies at the district and local level, among others.

The Act defines an organisation as 'a legally constituted non-governmental organisation ... which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes' (NGO Act, Section 3). This definition of an NGO in law is in itself narrow – taking into account the service delivery aspect of NGO work, but leaving out totally the advocacy of rights and influencing of policy aspects. So while, on the face of it, the act claims to want to provide a conducive space for civil society to operate in, in effect the thrust of the act is to exercise control over the sector.

The table below (Table 1) created by the International Center for Not-for-Profit Law (ICNL) (last updated 26 February 2017) lays out the regulatory requirements for NPOs, concluding that 'the legal framework for civil society in Uganda is



supportive of NGOs only insofar as an NGO's sphere of activity is politically and socially acceptable to the Government'.

Organizational Forms	Nongovernmental organizations (NGOs), trusts, and community based organizations (CBOs)
Registration Body	NGOs and CBOs: National Bureau for NGOs
Barriers to Entry	Registration is mandatory, with penalties for conducting activities through unregistered organizations. NGOs are subject to burdensome registration procedures, including recommendations from governmental representatives. NGOs are subject to annual re-registration. Procedural safeguards during registration are lacking. The National Bureau for NGOs has broad powers that include the ability to refuse to register an NGO. Upon registration or incorporation, NGOs are required to apply for a permit with the National Bureau for NGOs, which is issued for up to five years at the discretion of the Bureau. The Bureau has broad powers that include the ability to refuse to register an NGO or issue a permit.
Barriers to Activities	NGOs must seek prior approval from the District NGO Monitoring Committee (DNMC) and Local Government of the area of operation and sign a Memorandum of Understanding before carrying out activities in any part of the country. Before extending activities to a new geographical area of the country, NGOs must receive a recommendation from the NGO Bureau through the DNMC of that area. NGOs must cooperate with local councils, DNMCs and Sub-Country NGO Monitoring Committees (SNMCs). NGOs are subject to detailed requirements relating to staffing. Involuntary dissolution is by order of the High Court.
Barriers to Speech and/or Advocacy	While there are no legal barriers per se, NGOs promoting human rights may be subject to governmental intimidation. In addition, NGOs advocating gay rights may be criminalized.
Barriers to International Contact	Burdensome requirements on the hiring of non-citizens.
Barriers to Resources	All foreign funding must be received in the Bank of Uganda (government bank). NGO to have MoUs with all donors, sponsors, affiliates and foreign partners

	that specify the terms and conditions of ownership, employment, resources mobilized for the NGO and any other relevant matter.
Barriers to Assembly	Police approval required for public gatherings.

Table 1 ©ICNL (<http://www.icnl.org/research/monitor/uganda.html>)

The NGO Act was passed even though, in 2010, the Ministry of Interior Affairs (MIA) published a position paper titled: [‘The National NGO Policy: Strengthening Partnership for Development’](#) in which was stated that ‘The contribution of NGOs in the areas of service delivery, advocacy, democracy and good governance as well as community empowerment is beyond debate.’ (p. 1). The national NGO policy was formulated after a series of multi-stakeholder consultations between government, NGOs, donors and the private sector, in order to strengthen the relationship between the government and NGOs in order that NGOs could go about their work – whether that was service delivery or advocacy – more effectively, mitigating state hindrance.

The NGO policy paper espoused as its guiding principles the respect for fundamental human rights and freedoms, including the freedom of association and the independence of individuals and NGOs within the overall framework of the law; a respect for the diversity of the NGO sector; and the right of NGOs to autonomy, self-governance and self-regulation consistent with the law, among others (pp. 19-20).

The paper lays out the coordination mechanism for NGO policy, and, more importantly, lauds and encourages the efforts of self-regulation by the NGO community, stating:

Government is of the view that self-regulation, if effectively applied by all NGOs is the most cost effective means of fostering discipline and benchmarking quality assurance by sector stakeholders. Such success minimizes the need and extra costs of implementing a government-driven policing regime. (p. 31)

Despite this MIA policy paper setting out clearly the role of NGOs with respect to the state, the coordination mechanism, the importance of self-regulation and the dynamic operating context, the NGO Act of 2016 was passed, imposing many

burdensome and onerous regulatory requirements on NGO formation and functioning, with the NGO Bureau given broad, discretionary powers over NGOs (see Table 1 above). Additionally, the Act has a section (Section 44, especially provisions (d) and (f)) which prohibits and criminalises ‘any act, which is prejudicial to the interests of Uganda and the dignity of the people of Uganda’. Additionally, Section 30(1)(a) allows the NGO Bureau to refuse to register an organisation whose objectives are regarded as being in violation of the laws of Uganda. Such vague phrasing problematises the work of advocacy NGOs that, say, work on LGBTI rights or land rights or abortion. With impediments to accessing financial resources and, with Acts such as POMA, to the freedom of assembly, the operating environment for NGOs has become very restrictive in Uganda.

7. FATF MUTUAL EVALUATION REPORT (MER), UGANDA, 2016

Uganda was rated non-compliant with Recommendation 8 in the FATF Mutual Evaluation carried out in 2015 (the report of which was published in 2016). The report stated:

No TF (terrorism financing) risk assessment has been done in the sector to assess which NPOs are more vulnerable to TF abuse and the kind of preventive measures which need to be taken in terms of guidance to the identified NPOs and if necessary to other NPOs to avoid exposing themselves to TF risks. The capacity of the NGO Board does not enable it to do periodic reviews and continuous monitoring of the sector to know which NPOs face a high risk of being exposed to TF risks. (p. 85)

The report also pointed out shortcomings in terms of conducting outreach to the NPO sector on TF, stating:

The NGO Board has not conducted awareness to the NPO sector on TF risks. The Board has not provided or issued any information relating to TF risks or terrorism to the NPO sector. It does not have the capacity to do so given its size and still the limited knowledge by the Board itself on the TF risks that the NPO sector might be exposed to... The NGO Board which is responsible for regulating the NPO sector did not provide the assessment team with any guidance it has issued to the NPO sector, particularly relating to TF’ (pp. 85–86).

Clearly there were concerns about the capacity of the NPO Board to oversee the sector effectively, also in terms of financial accountability and transparency. The report also determined that the legal framework in place to deal with issues of TF when it came to NPOs was inadequate.

8. IMPACT OF FATF MER

The impact of the report can be analysed according to the following:

- National laws and regulations
- The MER follow-up process, the extended evaluation

8.1 National laws and regulations

Given the verdict of the FATF MER (based on the old NGO Act) on the inadequacy of the existing legal framework to deal with TF issues related to NPOs, the content of the new **NGO Act (2016)** is not surprising. But what is surprising is the departure from the government's fairly reasonable NGO policy paper of 2010 as mentioned above.

The 2016 NGO Act emphasises:

- the administrative and regulatory framework for NPOs
- their governance, transparency and accountability
- the setting up of a National Bureau for Non-Governmental Organisations, and the strengthening of its capacity
- the coordination with government and other stakeholders, and the capacity building of NPOs themselves
- the promotion of self-regulation among organisations

In addition to its policy advisory role, and its say in matters related to the employment of non-citizens, the National Bureau is given overarching powers to warn, suspend or blacklist organisations, and even to revoke their permits.

Moreover, the NGO Act (Section 44) states that no organization should:

'...engage in any act that is prejudicial to the security and laws of Uganda'

'... engage in any act, which is prejudicial to the interests of Uganda and the dignity of the people of Uganda'

This vague formulation gives the Bureau immense discretionary powers to interfere in the work of NGOs. Other troubling provisions of the Act include:

- that organisations be non-partisan and not support or oppose any candidate/party standing for political office
- the power of the Bureau to inspect an organisation with minimal notice
- detailed requirements related to staffing, including burdensome requirements for the hiring of non-citizens
- mandatory approval from district and local authorities, including the signing of an MoU, before an organisation can begin activities anywhere in the country
- the dissolution of an organisation by the court, including for the reasons set out in Section 44 (mentioned above)

Apart from the NGO Act, the **Anti-Terrorism Act** of 2002 was also revised: the process was ongoing during the FATF Mutual Evaluation onsite visit in 2015, and the amendment bill became law in June 2015. The objectives of the amended bill were to:

- expand the definition of terrorism
- redefine/focus on the financing of terrorism in line with international conventions
- provide for the freezing, seizure and forfeiture of funds or property reasonably linked or intended to be used for terrorist activities
- penalise indirect involvement in acts of terrorism

The amendments were made, the Act stated, in order to fulfil the country's obligations to the FATF:

Uganda has not amended its Anti-Terrorism law to address the Financial Action Task Force (FATF) Recommendations on terrorism and terrorism financing. The Bill therefore seeks to provide a suite of measures which are specifically designed to strengthen and improve Uganda's counter-terrorism legislative framework to comply with Uganda's international obligations and respond to terrorism threats. (p.1)

This illustrates a point that has long been made, namely that there is causation between FATF evaluation and national regulation. The FATF evaluates countries on their AML and CFT capabilities. However, the FATF very clearly advocates a risk-based approach, with Recommendation 1 stating at the outset that:

Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment, countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. (p.11)

Uganda, however, did not conduct either a national risk-assessment or a particular risk-assessment of the NPO sector. This was highlighted as one of the main shortcomings in the FATF MER of 2015, and the FATF recommended that this be one of the focal points of the extended evaluation process. This NGO Act, it can be safely inferred, is clearly then not based on mitigating sectoral terrorism financing and money laundering risks that have been identified. And without an appropriate risk-assessment of the sector, any additional regulation/measures (over and above existing laws and self-regulation) introduced by the state to evidence its improved regulatory environment around TF and ML can possibly be viewed as overbroad and disproportionate, and against the FATF's explicit advocacy of a risk-based approach. The sweeping powers of the NGO Bureau, the approvals needed from local/district authorities, the staffing and financing hurdles, and the implicit barriers to assembly and to advocacy, all impinge on the effective and free functioning of civic space in Uganda. And point at a correlation between how countries, under the guise of adhering to international standards, end up furthering their own political (and often ill-intentioned) agendas.

8.2 Follow-up to MER/Extended evaluation process

The FATF MER concluded that Uganda's AML/CFT regime was not well-developed given the national/regional risks ('known or suspected threats or vulnerabilities') it, in the assessors' opinion, faced, and recommended that the country conduct a National Risk Assessment and/or sectoral risk assessments, where applicable. The MER recommended the introduction of 'a much more efficient system to manage and regulate the NPO sector, including strengthening the legal framework, adequately resourcing the NGO Board, and (raising) AML/CFT awareness in the sector'.

ESAAMLG, the Eastern and Southern Africa Anti-Money Laundering Group, the regional FATF body responsible for the Uganda evaluation, [sets out the following](#) as its MER follow-up procedure:

For a member country that has been evaluated, it will immediately be placed under enhanced follow-up, if any one of the following applies:

- i. it has 8 or more NC/PC (*non-compliant/partially compliant*) ratings for technical compliance, or
- ii. it is rated NC/PC on any one or more of R.3, 5, 10, 11 and 20, or
- iii. it has a low or moderate level of effectiveness for 7 or more of the 11 effectiveness outcomes; or
- iv. it has a low level of effectiveness for 4 or more of the 11 effectiveness outcomes. (para 90, p. 33)

Uganda [meets all of the above criteria](#). The government is now required to report biannually on progress made to address deficiencies set out in the MER at the FATF plenary meetings. The FATF released the following on Uganda's follow-up process in October 2016:

Uganda should continue to work on addressing the following deficiencies: (1) adequately criminalise terrorist financing; (2) implement adequate procedures for freezing terrorist assets in accordance with UNSCRs 1267 and 1373, and their successor resolutions; (3) ensure that all financial institutions are subject to adequate record-keeping requirements; (4) and ensure that all financial services and the FIA (Financial Intelligence Authority) have the power to supervise and enforce compliance with AML CFT requirements (5) establish a fully operational and effectively functioning financial intelligence unit; (6) introduce and implement an appropriate legal basis to permit the competent authorities to provide a wide range of mutual legal assistance; and (7) ensure that appropriate laws and procedures are in place with regard to international co-operation for the financial intelligence unit and supervisory authorities.



In early 2016, Uganda embarked on a National Risk Assessment (NRA) of ML/TF risk using the World Bank's NRA tool and methodology (see Annexe 2), with technical assistance from the International Centre for Asset Recovery (ICAR). This is a ['diagnostic and decision-making' tool](#), using both quantitative and qualitative information to assess a country's ML/TF threats and vulnerabilities.

The FATF defines risk as follows:

Risk can be seen as a function of three factors: *threat*, *vulnerability* and *consequence*. An ML/TF risk assessment is a product or process based on a methodology, agreed by those parties involved, that attempts to identify, analyse and understand ML/TF risks and serves as a first step in addressing them. Ideally, a risk assessment, involves making judgments about threats, vulnerabilities and consequences...

(National Money Laundering and Terrorist Financing Risk Assessment, p.7)

NPOs are mentioned as being 'users' of a risk assessment (p.8), i.e., as being among one of the entities to whom the risk assessment might pertain.

The Ugandan NRA is now complete, but we do not have access to the outcome. The assessment was also supported by the Basel Institute via its involvement in the 'Strengthening Uganda's Anti-Corruption Response' (SUGAR) project funded by the Department of International Development (DFID, UK). The SUGAR project's overall aim is to 'address corruption in Uganda by supporting several central governmental institutions'. We know that, as part of the NRA process, representatives from the government, from supervisory authorities and the private sector (not clear whether NPOs were involved) met to discuss the NRA. The objectives of the World Bank's NRA tool are:

- To guide jurisdictions in assessing their ML/TF risks, with a view to helping them use the information gained to design a more effective, risk-based anti-money laundering and combating the financing of terrorism (AML/CFT) regime.
- To contribute to capacity building in the country, not only for assessing the ML/TF risks but also for improving the data and information collection framework and practices.



- To raise awareness, and trigger interaction and cooperation among the stakeholders from governments and the private sector. (p. 1)

The World Bank recommends that a multi-stakeholder Working Group is set up in order to carry out the NRA. Stakeholders should include the Financial Intelligence Unit, the Central Bank and/or other regulatory and supervisory agencies, self-regulatory bodies, prosecutors, law enforcement, tax and customs authorities, and other relevant authorities. The Bank also strongly recommends the involvement of representatives from other relevant sectors, including academics. Based on the results of the risk assessment, a risk-based approach and strategy is put in place to mitigate ML/TF deficiencies.

It is not mandatory for governments to publish the NRA report, however, there is an expectation, according to the FATF, that relevant information will be shared. For example:

...a ML/TF risk assessment with law enforcement or other operational services as the primary users might discuss risks according to the threats (actors and activities) that were the starting point of the assessment. For a report whose primary audience consists of regulators or the private sector, a discussion of the risks grouped according to vulnerability (sector, product, etc.) might be most useful. (p.29)

Only if this information is shared can the sector take appropriate measures to mitigate the risks identified. It is hoped that the Ugandan authorities will, in due course, share with the NPO sector the results of the risk assessment that are pertinent to the sector itself.

9. SCOPE FOR ENGAGEMENT FOR NPOS IN UGANDA

As is evident from the above, an understanding of risks is crucial to evaluating compliance with and assessing effectiveness of FATF Recommendations, including Recommendation 8 on nonprofits. Ideally, a sectoral risk assessment of NPOs should be conducted before the MER onsite visit. And even previous to the onsite visit, NPOs can submit representations to the FATF Secretariat on

issues of concern to them with regard to existing regulations and laws, with a copy to the government (all submissions to the FATF Secretariat as shared with the government and the assessing team). These representations will then form part of the scoping report (see Figure 1), which the assessors read prior to the onsite visit.

The sectoral risk assessment should involve representatives from the sector, including service delivery and advocacy groups, and NPO umbrella organisations. Further, the onsite assessment team should meet with representatives of the sector to understand:

- Existing laws and regulations
- Self-regulation measures
- Climate for NPOs in the country

However, the ESAAMLG *Procedures* manual states that a meeting with private sector representatives is 'at the discretion of the assessed country' (p. 16), though it does go on to add that:

meetings with the private sector and other non-governmental representatives are an integral part of the visit, and generally, the assessors should be given the opportunity to meet with various representatives of associations and institutions in private, and without a government official present. (p. 16)

Again, in the appendix, in the list of Designated Non-Financial Businesses and Professions (DNFBPs) (see glossary) 'typically involved' in the onsite visit, there is mention of:

Bodies or mechanisms that have oversight of non-profit organisations, for example tax authorities (where relevant) (p.45)

This latter would mean that by consulting, say, the regulatory authority, the National Bureau on NGOs, the government would be deemed to have fulfilled its responsibility to the sector. (It is important to note that the FATF distinguishes between DNFBPs and NPOs: DNFBPs have reporting requirements, NPOs do not. Therefore, it is important to keep this distinction alive and not conflate the two. Given that NPOs fall under the purview of an entire Recommendation, engagement with the sector should be considered vital).

However, we know that the discontent in the sector to the overbearing regulations currently in place is widespread, especially among advocacy groups. Groups and activists representing LGBTI rights, and fighting for oil transparency, against corruption, and for land rights, among other sensitive issue, have been subject to institutional harassment and been most at risk.

Having a regulatory authority or a GONGO (government-organised non-governmental organisation) at the table representing all NPOs might not adequately reflect the voices and concerns of the above organisations. Given the restrictions brought on by the NGO Act to civic participation, engagement and association for organisations involved in service delivery, governance and advocacy, consultations on the impact of such regulations need to be inclusive of these organisations or their representatives.

Given the FATF MER process is now over, and the window of opportunity to engage in that process over, NPOs have to think of how they can engage in the FATF enhanced evaluation process. And given that Uganda now has to report biannually to the FATF for the next five years on progress made on the MER (i.e., till the next follow-up evaluation in 2021), this would be a good time for NPO coalitions to come together and make their voices heard. The risk of not engaging in the extended evaluation process is twofold:

- NPOS will have no say in defining and/or countering any possible mitigation measures proposed by the NRA (including laying out self-regulation measures already in place)
- NPOs might be subject to further laws, amended laws or regulations that further restrict their operating space

The following is a list of recommendations for engagement in the process going forward.

10. RECOMMENDATIONS

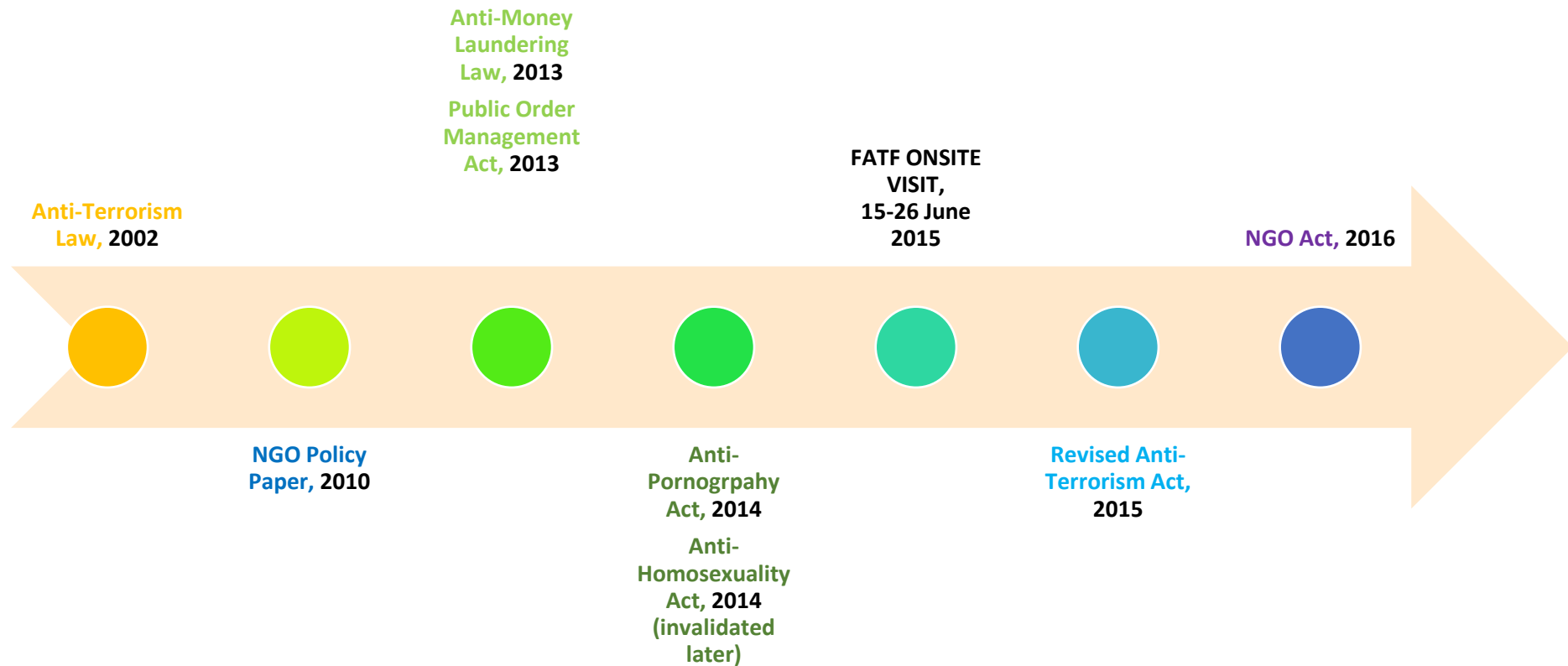
- Form an NPO coalition, inclusive of diverse actors in the field, with the aim of putting forward the case that there is overregulation of the sector.
- Conduct your own risk assessment of the sector. The sector can provide in-depth knowledge of and valuable information about structure, organisation and size of the sector, as well as help determine level of risk and assist in identifying vulnerabilities.

- Document existing self-regulation mechanisms in the sector and their effectiveness. Consider mitigating measures where weaknesses are identified.
- Make the case for the revision or repeal of legislation in line with the risk assessment, the mitigating measures suggested and the existing self-regulation measures in place.
- Document the impact of recent legislation/regulations on your day-to-day functioning with a view to making the above case for overregulation and, therefore, revision/repeal of existing laws (see, for example, how NPOs in the US documented the impact of counter-terror legislation on their effective functioning:
<http://www.charityandsecurity.org/sites/default/files/files/FATFUSEvalMemo2015.pdf>)
- Lobby NPO umbrella organisations in your country to adopt the issue and advocate on it (the NGO Forum, e.g., <http://ngoforum.or.ug/>)
- Engage with the Ministry of Internal Affairs, the ministry in-charge of NPOs, and have an open dialogue about your concerns.
- Try and find out if the government conducted a sectoral risk assessment as part of the National Risk Assessment process. Also try and find out what the outcome for NPOs was of that NRA process.
- Keep tabs of and engage with the FATF extended evaluation process to see what new measures and regulations the government is putting in place to comply with the FATF's Recommendations and what impact that has, if any, on your sector. While FATF processes are often well-hidden within bureaucracies, there are developments related to AML/CFT in and around the FATF evaluation/extended evaluation processes, so we can safely conclude that there is certain traction there in terms of lawmaking.
- Organise multi-stakeholder meetings – with representatives from the government, from the Ministry of Finance, from the Financial Intelligence Authority, from banks, from the NGO Bureau and from ESSAMLG. The NPO Global Coalition on FATF will be happy to coordinate such a meeting, and initial dialogue with ESAAMLG on this has been positive. We have found that multi-stakeholder dialogue and engagement is often conducive to better understanding and change.
- The NPO Global Coalition on FATF will also be happy to introduce NPOs with AML/CFT stakeholders in the government as part of a follow-up engagement process.



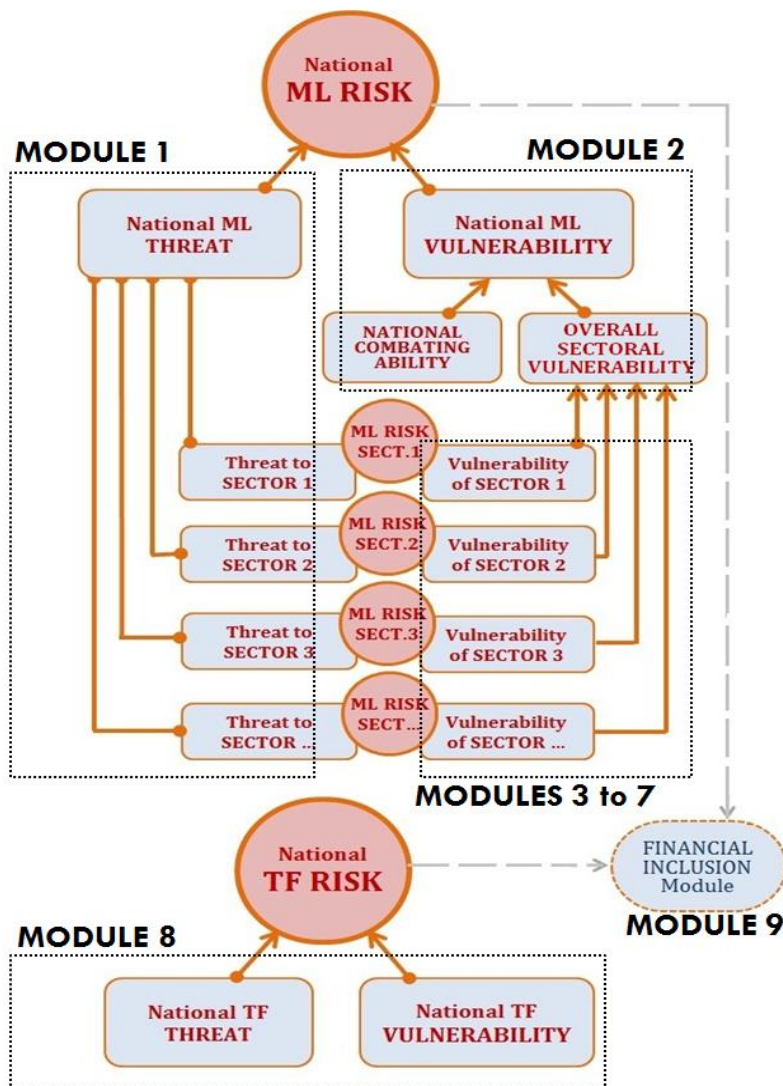
There is a clear window of opportunity over the coming years to highlight the impact of adverse legislation and regulation on the operating environment of civil society, and NPOs should consult, organise and engage, with a view to influencing this and ensuring the openness and effectiveness of the space they function in.

12.1 Annexe 1: Timeline of events



12.2 Annexe 2: The National Risk Assessment Tool, © World Bank

Money Laundering Risk Assessment	Terrorist Financing Risk Assessment	Financial Inclusion Product Risk Assessment
<ul style="list-style-type: none"> •Module 1-Threat Assessment •Module 2-National Vulnerability •Module 3-Banking Sector Vulnerability •Module 4-Securities Sector Vulnerability •Module 5-Insurance Sector Vulnerability •Module 6-Other Financial Institutions' Vulnerability •Module 7-DNFBP Sectors Vulnerability 	<ul style="list-style-type: none"> •Module 8-National Terrorism Financing Threat and Vulnerability 	<ul style="list-style-type: none"> • Module 9-Financial Inclusion Product Risk Assessment



12.3 Annexe 3: GLOSSARY (FATF definitions)

AML/CFT: Anti-Money-Laundering / Countering the Financing of Terrorism

Beneficial owner: refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

Designated non-financial businesses and professions:

- a) Casinos
- b) Real estate agents
- c) Dealers in precious metals
- d) Dealers in precious stones
- e) Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to ‘internal’ professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to AML/CFT measures.
- f) Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:
 - acting as a formation agent of legal persons;
 - acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
 - acting as (or arranging for another person to act as) a nominee shareholder for another person.

FIU: A Financial Intelligence Unit is a central, national agency responsible for receiving, (and as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information:

- a) concerning suspected proceeds of crime and potential financing of terrorism, or
- b) required by national legislation or regulation, in order to combat money laundering and terrorism financing.

IN: Interpretive Note to the FATF Recommendations

ML: Money Laundering

NPO: Nonprofit organisations, referring to a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of 'good works' (as this term is used in the Interpretive Note to Recommendation 8).

RBA: Risk-based Approach

Risk: In this case refer to the risk of money laundering and/or terrorist financing

Terrorist: refers to any natural person who: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts ; (iii) organises or directs others to commit terrorist acts ; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

Terrorist act: includes:

- (a) an act which constitutes an offence within the scope of, and as defined in one of the following treaties: (i) Convention for the Suppression of Unlawful Seizure of Aircraft (1970); (ii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); (iii) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973); (iv) International Convention against the Taking of Hostages (1979); (v) Convention on the Physical Protection of Nuclear Material (1980); (vi) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988); (vii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005); (viii) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (2005); (ix)

International Convention for the Suppression of Terrorist Bombings (1997); and
(x) International Convention for the Suppression of the Financing of Terrorism (1999).

(b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act.

Terrorist financing: Terrorist financing is the financing of terrorist acts, and of terrorists and terrorist organisations.

Terrorist organisation: refers to any group of terrorists that: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

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13. ADDITIONAL ONLINE RESOURCES

FATF website: <http://www.fatf-gafi.org/>

The Non Profit/Civil Society Platform on FATF: <http://fatfplatform.org/>

ESAAMLG: <http://www.esaamlg.org/>

Government of Uganda:

Laws and regulations: <http://fia.go.ug/publication/enabling-laws-regulations>

NGO Bureau: <https://www.mia.go.ug/department/ngo-bureau>

International Center for Not-for-Profit Law: <http://www.icnl.org/>

World Bank National Risk Assessment Tool:

<http://www.worldbank.org/en/topic/financialmarketintegrity/brief/antimoney-laundering-and-combating-the-financing-of-terrorism-risk-assessment-support>